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## SETTLEMENT AND RELEASE AGREEMENT

THIS CLEAN WATER ACT SETTLEMENT AND RELEASE AGREEMENT (the "CWA Settlement Agreement" or "Agreement") is made and entered into as of April 13, 2004 by and between **McCALL OIL AND CHEMICAL CORPORATION**, ("McCall") and **NORTHWEST ENVIRONMENTAL DEFENSE CENTER**, an Oregon nonprofit corporation ("NEDC"). Together, McCall and NEDC are referred to in this Agreement as the Parties, and in the singular as a Party.

### RECITALS

Whereas, on February 12, 2004, NEDC sent McCall a Sixty-day Notice of Violations of the Clean Water Act ("Notice"). In the Notice, NEDC alleged that McCall had violated and continues to violate provisions of McCall's National Pollutant Discharge Elimination System ("NPDES") 1300-J and 500-J general permits.

Whereas, McCall disputes NEDC's allegations.

Whereas, McCall and NEDC desire to settle all claims and allegations made in the Notice, and any and all other issues under the Clean Water Act that exist or may exist by and between them, pursuant to the terms and conditions set forth herein so as to avoid the time, cost, and expense of litigation, including but not limited to the time, cost and expense of obtaining judicial review and approval of a consent decree consistent with this Clean Water Act ("CWA") Settlement Agreement.


### AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, McCall and NEDC incorporate the foregoing recitals and agree as follows:

### ARTICLE I

**I.1** In consideration of NEDC's entry into this Agreement and other obligations as set forth below, McCall agrees:

(a) McCall shall comply with all discharge limits in Schedule A of NPDES general permits 1300-J and 500-J as amended, modified or renewed from time to time. McCall shall pay a stipulated amount of \$500.00 for each time it exceeds such discharge limits if McCall voluntarily reports these exceedances to NEDC and to DEQ within 30 days of the end of the calendar month in which McCall discovers it has exceeded such discharge limits. McCall shall pay a stipulated amount of \$750.00 for each time it exceeds such discharge limits if McCall does not voluntarily report these exceedances to NEDC and to DEQ within 30 days of the end of the calendar month

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in which McCall has exceeded such discharge limits. Such stipulated amounts shall be sent to Northwest Environmental Advocates in support of that organization's Earth Day Every Day Oregon program. This provision of the agreement is to remain in effect from the date of this Agreement for 3 calendar years.

(b) McCall will make a donation of \$7,000 to Grout Elementary School to be used for environmental science and environmental educational outreach efforts that get third through fifth graders out of the classroom to directly experience Oregon's rivers, estuaries, and wetlands with assistance from a Reed College Grant. Payment shall be made within 15 days after execution of this agreement by check payable to Grout Elementary School and designated for use for environmental educational outreach efforts. McCall shall notify NEDC when the payment is made.

(c) McCall will make a donation of \$3,000 to Oregon Trout for a specific river habitat restoration project. Payment shall be made within 15 days after execution of this agreement by check payable to Oregon Trout and designated for use for such project. McCall shall notify NEDC when the payment is made.

(d) McCall will make a donation to underwrite NEDC's attorney fees, law clerk fees, and costs within 15 days of the date of this agreement. Payment shall be made by check payable to Northwest Environmental Defense Center and mailed to Mark Riskedahl, Northwest Environmental Defense Center, 10015 SW Terwilliger Blvd, Portland, OR 97219. The total amount for attorney fees, clerk fees, and costs shall not exceed \$6,000.00, provided this Agreement is executed prior to April 16, 2004.

**1.2** In consideration of McCall's undertakings as set forth above, NEDC agrees to abide by and fully comply with the terms of this Agreement.

## **ARTICLE II**

### **RELEASE**

In consideration of McCall's entry into this Agreement with obligations as set forth herein, NEDC further agrees:

**II.1 NEDC's Release of McCall.** NEDC shall make no filing with any court regarding any allegations in the Notice. Further, with the exception of the obligations specifically required under this Agreement, NEDC releases and discharges McCall, its representatives, assigns, agents, employees, commissioners, officers and attorneys, and each of them, including those who have held those positions in the past, of and from any and all claims, debts, liabilities, damages, demands, obligations, penalties, costs, actions, causes of action of every nature, character and description, known or unknown, vested or contingent, which concern or are connected with McCall's compliance with McCall's NPDES general permits for discharges from the facility located at 5480 NW Front Avenue, whether known or unknown as of the date of this agreement.

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**II.2 McCall's Release of NEDC.** With the exception of the obligations specifically required under this Agreement, McCall releases and discharges NEDC, its representatives, assigns, agents, customers, employees, commissioners, officers and attorneys, and each of them including those who have held those positions in the past of and from any and all claims, debts, liabilities, damages, demands, obligations, penalties, costs, actions, causes of action of every nature, character and description, known or unknown, vested or contingent, which concern or are connected with the Notice.

### **ARTICLE III**


#### **DISPUTE RESOLUTION**

**III.1 Policy.** The Parties hope there will be no disputes arising out of this Agreement. To that end, each commits to cooperate in good faith and to deal fairly in performing its respective duties under this Agreement in order to accomplish their mutual objectives and avoid disputes. If a claim, dispute or disagreement relating to the interpretation, application or enforcement of this Agreement or either Party's performance under this Agreement (a "CWA Settlement Agreement Dispute") arises, the Parties agree to use good faith efforts to resolve all such CWA Settlement Agreement Disputes by the following procedure. First, in the event that either Party believes that a CWA Settlement Agreement Dispute exists, that Party shall notify the other Party in writing of the existence of such CWA Settlement Agreement Dispute (a "Notice of CWA Settlement Agreement Dispute") before pursuing any other form of dispute resolution. Upon delivery of a Notice of CWA Settlement Agreement Dispute, the Parties shall use good faith efforts to negotiate an amicable resolution of the CWA Settlement Agreement Dispute within fifteen (15) days following delivery of the Notice of CWA Settlement Agreement Dispute. Second, if such negotiations are unsuccessful, the Parties may thereafter pursue remedies available to them in accordance with this Agreement through the commencement of an action or the institution of other proceedings before a court having appropriate jurisdiction.

### **ARTICLE IV**

#### **MISCELLANEOUS**

**IV.1 Notices.** Whenever under the provisions of this Agreement, it shall be necessary or desirable for one Party to serve any notice, request, demand, report or other communication on another Party, the same shall be in writing and shall not be effective for any purpose unless served: (a) personally, (b) by independent, reputable, overnight commercial courier, (c) by facsimile transmission where the facsimile transmission is immediately followed by service of the original of the subject item by personal delivery, overnight courier or first-class mail, or (d) by deposit in the United States mail, postage and fees fully prepaid, first class, registered or certified mail, addressed as follows:

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If to NEDC: Northwest Environmental Defense Center  
10015 S.W. Terwilliger Blvd.  
Portland, OR 97219  
Attention: Mark Riskedahl  
Fax: 503.768.6671

With a copy to: Scott Jerger  
Attorney At Law  
610 SW Alder, Suite 910  
Portland, Oregon 97205  
Fax: 503.225.0276

If to McCall: McCall Oil & Chemical Corporation  
5480 NW Front Ave.  
Portland, Oregon 97210  
Attention: Jim Charriere, President  
Fax: 503.221.6414

With a copy to: Tonkon Torp LLP  
1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204  
Attention: Max M. Miller, Jr.  
Fax: 503.972.3730

**IV.2 Construction and Interpretation of Agreement.** The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument. As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

**IV.3 Counterparts.** This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

**IV.4 Entire Agreement; Drafting.** This Agreement shall constitute the entire and exclusive agreement between the parties relating to the matters covered in this Agreement. All prior or contemporaneous verbal or written agreements, understandings, representations and practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose. Both parties are co-drafters of this Agreement.

**IV.4 Free and Voluntary Act.** The Parties agree that they are entering into this Agreement as a free and voluntary act. The Parties represent that they have had adequate time to evaluate this Agreement and sign it only after full reflection and analysis.

**IV.5 Advice of Counsel.** The Parties confirm that in negotiating this Agreement they have received advice from counsel of their choosing and that they have read and understand the Agreement.

**IV.6 Authority.** The Parties represent and warrant that the individuals signing this Agreement on their behalf have full legal authority to do so.

**IV.7 Changes to Agreement.** This Agreement may not be changed orally but only in writing signed by all Parties.

**IV.8 No Admission of Liability.** It is understood and agreed that this Agreement is in full compromise of disputed claims and that entry into this Agreement is not an admission of liability on the part of McCall, and McCall expressly denies liability for claims made in the Notice.

**IV.9 Applicable Law.** The substantive and procedural law of the State of Oregon which exists on the date of execution of this Agreement shall govern the interpretation and enforcement of this Agreement, and all disputes arising out of this Agreement shall be litigated exclusively in the courts of the State of Oregon.

**IV.10 Effective Date.** This Agreement shall become effective upon its execution by the Parties as of the date first written on Page 1.

**IV.11 Confidentiality.** The parties shall keep all terms of this Agreement confidential, and shall not disclose any aspect of this Agreement except as required by law or as necessary to enforce the terms of this Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement on the date first written above.

McCall: McCall Oil & Chemical  
Corporation

By: 

Name: Edgar S. McCall

Title: V.P. Risk / Secretary  
BOD.

NEDC: Northwest Environmental Defense  
Center

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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McCall: McCall Oil & Chemical  
Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NEDC: Northwest Environmental Defense  
Center

By: Mark Riskedahl

Name: Mark Riskedahl

Title: Executive Director

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